

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

PETROCHEM INSULATION, INC.

Employer

and

Case 21-RC-20619

INTERNATIONAL ASSOCIATION OF HEAT &
FROST INSULATORS & ASBESTOS
WORKERS, LOCAL NO. 5, AFL-CIO

Petitioner

REPORT ON OBJECTIONS
AND
ORDER DIRECTING HEARING
AND
NOTICE OF HEARING

This Report¹ contains my conclusions regarding the Petitioner's objections to the election conducted on June 27, 2003, among the employees of the Employer, in the unit agreed appropriate for the purposes of collective bargaining.² The Petitioner's objections allege that the Employer provided the Petitioner with an inaccurate and incomplete Excelsior list; the Employer threatened employees with loss of their jobs, loss of benefits, demotion and more onerous working conditions if they

¹ This report has been prepared under Section 102.69 of the Board's Rules and Regulations, Series 8, as amended.

² The unit is composed of: All full-time and regular part-time employees, including foremen, leadmen, mechanics, skilled helpers, helpers, skilled laborers, laborers, warehouse employees, insulators, truck drivers, fabricators, equipment operators, sheet metal workers, ironworkers, fireproofers, painters, scaffold builders, refractory installers, carpenters, welders, steam and electrical tracers employed by the Employer at its facility located at 19010 South Alameda Street, Rancho Dominguez, California; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

voted for the Petitioner; the Incumbent Union threatened³ employees with loss of their jobs, loss of benefits, demotion and more onerous working conditions if they voted for the Petitioner; the Incumbent Union misrepresented itself as being part of the AFL-CIO; and by the above and other conduct, the Employer and the Incumbent Union, has interfered with, coerced, and restrained employees in the exercise of their Section 7 rights, and has interfered with their ability to exercise a free and reasoned choice in the election.

Procedural History

Pursuant to a Stipulated Election Agreement approved on May 9, 2003, an election was conducted as a partial mail ballot and with two manual polling sites. The payroll period for eligibility was May 4, 2003. In addition, eligible were those employees in the unit who had been employed for a total of 30 working days or more within the 12 months immediately preceding the eligibility date, or who had some employment in that period and had been employed 45 working days or more within the 24-months period immediately preceding the eligibility date for the election, and who had not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed. The Employer is engaged in the construction industry.

The tally of ballots served on the parties at the conclusion of the election showed that of approximately 148 eligible voters, 14 cast ballots for the Petitioner, 71 cast ballots for the Incumbent Union, none cast ballots against the Incumbent Union and the Petitioner. There were 14 void ballots and 16 challenged ballots. The challenged ballots were not sufficient in number to interfere with the results of the election.

The Petitioner filed timely objections to alleged election interference occurring between the petition filing date of April 25, 2003, and the date of the election. The Petitioner's objections, a copy of which is attached hereto as Attachment A, were timely served upon the Employer and the Intervenor.

³ International Union of Petroleum and Industrial Workers is the Incumbent Union and Intervenor in these proceedings.

The Objections

Regarding Objection No. 1, the Petitioner alleges that the Employer provided it with an inaccurate and incomplete Excelsior list. In support of its contention, the Petitioner asserts that there were at least 32 inaccurate or outdated addresses on the eligibility list, and that there were a number of omissions.

As to Objections No. 2, the Petitioner contends that employees received campaign literature from the Employer including a memorandum dated June 3, 2003 suggesting that voting for the Petitioner would result in lower wages for employees.

With regard to Objection No. 3, the Petitioner alleges that employees received campaign literature from the Intervenor stating that if employees voted to be represented by the Petitioner, they would no longer be employees of the Employer.

As to Objection No. 4, the Petitioner contends that the Intervenor misrepresented itself as an AFL-CIO affiliate at a time when the AFL-CIO maintained that there was no such affiliation.

Regarding Objection No. 5, the Petitioner alleges that by the above and other conduct, the Employer and the Incumbent Union, has interfered with, coerced, and restrained employees in the exercise of their Section 7 rights, and has interfered with their ability to exercise a free and reasoned choice in the election.

The Employer and the Incumbent Union deny that they engaged in any objectionable conduct.

Conclusion

In view of the conflicting positions of the parties and the substantial material, factual and legal issues raised by the above-noted objections, I conclude that the Petitioner's Union's Objection Nos. 1 through 5 can best be resolved by a hearing. Accordingly, pursuant to Section 102.69(d) of the Board's Rules and Regulations, Series 8, as amended, I shall direct a hearing on Petitioner's Objections Nos. 1 through 5.

IT IS HEREBY ORDERED that the Hearing Officer designated for the purpose of conducting such hearing shall

prepare and cause to be served upon the parties a report containing the resolution of the credibility of witnesses, findings of facts, and recommendations to the Board as to the disposition of Petitioner's Objection Nos. 1, 2, 3, 4, and 5. The provisions of Section 102.69 of the Rules shall govern with respect to the filing of exceptions or an answering brief on the exceptions to the Hearing Officer's report.⁴

NOTICE OF HEARING

PLEASE TAKE NOTICE that, on the 1st day of August, 2003, **and such consecutive days thereafter until concluded**, at 9 a.m., PDT, in Hearing Room 902, Ninth Floor, 888 South Figueroa Street, Los Angeles, California, a hearing be conducted for the purposes set forth in the above Order, at which time and place the parties will have the opportunity to appear in person, or otherwise, and give testimony.

DATED at Los Angeles, California, this 22nd day of July, 2003.

/s/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board

⁴ This direction of hearing is subject to special permission to appeal in accordance with Section 102.69(i)(1) and Section 102.64 of the Board's Rules and Regulations, Series 8, as amended.